

THIS DISPOSITION IS
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Mailed: September 14, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Anything Goes, Inc.

Serial No. 76530298

Request for Reconsideration

Ezra Sutton of Ezra Sutton, P.A. for Anything Goes, Inc.

Michael Webster, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Hanak, Hairston and Chapman, Administrative
Trademark Judges.

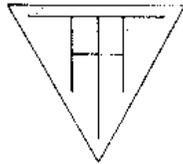
Opinion by Chapman, Administrative Trademark Judge:

On February 8, 2005, the Board affirmed the Examining
Attorney's refusal to register applicant's mark shown below

HT

for "mail order catalog services featuring jewelry and
online retail store services featuring jewelry" in

International Class 35¹ under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the registered mark shown below



for "jewelry made of precious metals with or without precious or semi-precious stones" in International Class 14.²

Applicant timely appealed the Board decision to the Court of Appeals for the Federal Circuit (Appeal No. 05-1350). On June 28, 2005, the Court granted a motion to remand the case to the Board; and on July 7, 2005 (via certificate of mailing), applicant filed a request for reconsideration.

Applicant essentially contends that its mark and the cited mark differ in appearance, sound, and commercial impression. Specifically, applicant contends that the cited mark consists of "a large and distinctive design in the form of rectangular boxes inside a triangle, forming a virtually pure and very distinctive design mark which is

¹ Application Serial No. 76530298, filed July 7, 2003.

² Registration No. 1771358, issued May 18, 1993, Section 8 affidavit accepted, renewed.

distinguishable from Applicant's mark" (request for reconsideration, p. 3); that assuming the cited registered mark is purely a design mark, it cannot be pronounced, whereas applicant's mark is clearly the letters "HT" and would be so pronounced by consumers; that assuming consumers would recognize that the cited mark includes the letters "T" and "H," those consumers would recognize the letters as "TH" not "HT"; and that the USPTO has failed to meet its burden to establish that there is a likelihood of confusion between applicant's mark and the cited registered mark.

The Board has carefully reviewed applicant's request for reconsideration, and applicant has persuaded the Board that the involved marks (shown above), when considered in their entities, are more dissimilar than similar in appearance, sound and commercial impression. For example, the cited registrant's mark might be viewed by some consumers as purely a design, while other consumers may recognize letters but see them as the letters "TH," not "HT."

Thus, on this ex parte record, we hereby grant applicant's request for reconsideration, and the Board's February 8, 2005 order finding a likelihood of confusion

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and affirming the Examining Attorney's refusal to register is vacated.

The Examining Attorney's refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), is hereby reversed.